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10/033,063	10/25/2001	James R. Mault	MJA-21702/03	6818

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EXAMINER

GOTTSCHALK, MARTIN A

ART UNIT	PAPER NUMBER
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3626

DATE MAILED: 08/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/033,063

Applicant(s)

MAULT, JAMES R.

Examiner

Martin A. Gottschalk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>02/15/2002</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

1. Claims 1-20 have been examined.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Summerell et al (US Pat# 5,937,387, hereinafter Summerell).

A. As per claim 1, Summerell discloses a method of assisting a person in a lifestyle control program conducive to good health (Summerell: col 2, lns 57-59), comprising:

(a) storing in a database (Summerell: col 8, lns 16-18) lifestyle data from a statistically large group of persons (Summerell: Fig. 9, reads on "10-year US Census Mortality Data"), and the correlation of such lifestyle data to good health (Summerell: col 13, lns 33 through col 14, lns 1-2, note the discussion of covariance);

(b) collecting (Summerell: Fig. 3, item 308, reads on "...questionnaire..."), in a personal logging device for the person (Summerell: col 7, lns 48-50, reads on "client computer system"; col 8, lns 4-7, reads on "stand alone workstation or PC." ), corresponding lifestyle data of the respective person (Summerell: col 9, lns 32-61);

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(c) feeding said collected lifestyle data from said personal logging device of the person to said database (Summerell: col 7, lns 48-50, note the client computer system in communication with the server computer system. Note further, screens for the user to enter data, for example Fig. 4.);

(d) performing a statistical analysis of said lifestyle data collected from the respective person, with respect to said lifestyle data of said group stored in said database, to produce an output including correlations of said lifestyle data collected from respective persons to good health (Summerell col 9, ln 62 - col 16, ln 35); and

(e) feeding back to said person health-promoting information based on said correlations (Summerell: Figs. 17-30, col 16, ln 51 through col 17, ln 6).

B. As per claim 2, Summerell discloses a method wherein

said health-promoting information is fed back to said person via said personal logging device of the person (Summerell: Figs. 17-30, col 16, ln 51 through col 17, ln 6).

C. As per claim 3, Summerell discloses a method wherein

said database is located at a remote location from said personal logging device (Summerell: col 7, lns 48-50, reads on "server computer system") and communicates therewith via a communication channel (Summerell: col 8, lns 4-7).

D. As per claims 4 and 5, Summerell discloses a method wherein

(Claim 4) said database communicates with said personal logging device via a communication channel (Summerell: col 8, lns 4-7) and feeds back said individual

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health-promoting information to said person via said personal logging device

(Summerell: Figs. 17-30, col 16, ln 51 through col 17, ln 6);

and

(Claim 5) said communication channel is the Internet (Summerell: col 8, lns 4-7).

E. As per claim 6, Summerell discloses a method wherein

said lifestyle data collected in said personal logging device includes diet data as to the food types and quantities consumed or to be consumed by the respective person (Summerell: col 9, lns 32-61, e.g. "breakfast" in ln 43).

F. As per claim 7 and 8, Summerell discloses a method wherein

(Claim 7) said lifestyle data collected in said personal logging device further includes energy expenditure data as to the energy expended or to be expended by the respective person

and

(Claim 8) said energy expenditure data includes a measurement of the energy expended by the resting metabolism of the person, and a measurement of the energy expended by physical activities of the person (Summerell: TABLE ONE, data following the third line item under the column heading of "Wellness Factor"; col 8, ln 66 through col 9, ln 3).

G. As per claim 10, Summerell discloses a method wherein

said lifestyle data collected in said personal logging device further includes

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personal health data including the age, gender, weight and height of the respective person (Summerell: Fig. 3 item 308, reads on "DEMOGRAPHIC"; col 9, ln 60; col 8, lns 53-55; col 11, lns 13-29).

H. As per claim 11, Summerall discloses a method wherein  
said personal health data further includes prior illnesses (Summerall: col 5, lns 1-2, reads on "pre-existing health conditions") of the individual and medications being taken by the person (Summerell: col 9, lns 32-61, note ln 33, "medication use").

I. As per claim 12, Summerell discloses a method wherein  
said personal health data further includes genetic information of the respective person (Summerell: col 9, lns 32-61, e.g. lns 28-29, "...genetic makup, genetic risks...").

J. As per claim 13, Summerell discloses a method wherein said lifestyle data collected in said personal logging device further includes environmental data regarding various environmental conditions of the respective person (Summerell: col 9, lns 32-61, e.g. note "environment" in ln 39).

K. As per claim 14, Summerell discloses a method wherein  
said output produced as a result of said statistical analysis also includes an indication of future health risks of the respective person (Summerell col 9, ln 62 - col 16, ln 35; col 3, lns 49-51, reads on "composite relative risk").

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L. As per claim 15, Summerell discloses a method of providing health and lifestyle advice to a person (Summerell: col 2, lns 57-59), comprising the steps of:

(a) providing the person with a lifestyle logging device (Summerell: col 7, lns 48-50, reads on "client computer system"; col 8, lns 4-7, reads on "stand alone workstation or PC.");

(b) collecting lifestyle data from the person (Summerell: Fig. 3, item 308, reads on "...questionnaire..."; col 9, lns 32-61),

(c) storing the lifestyle data in a database (Summerell: col 8, lns 16-18);

(d) collecting health related data from the person (Summerell: Fig. 3, item 308, reads on "...questionnaire..."; col 9, lns 32-61);

(e) performing steps (a)-(d) for other persons within a group of persons (rejected for same reasons as provided above for claim 15, steps a-d);

(f) determining statistical correlations between the lifestyle data and the health data to good health for the group of persons (Summerell col 9, ln 62 - col 16, ln 35);  
and

(g) providing feedback to the person based on said statistical correlations;  
whereby statistical correlations between lifestyle data and health data for the group of

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persons is used to provide feedback and advice to the person (Summerell: Figs. 17-30, col 16, ln 51 through col 17, ln 6).

M. As per claim 16, Summerell discloses a method of providing health and lifestyle advice to a person, within a group of persons (Summerell: col 2, lns 57-59), comprising:

(a) collecting lifestyle data (Summerell: Fig. 3, item 308, reads on "...questionnaire..."; col 9, lns 32-61) from the group (Summerell: Fig. 9, reads on "10-year US Census Mortality Data") of persons and storing it in a database (Summerell: col 8, lns 16-18);

(b) collecting health data from the group of persons (Summerell: Fig. 3, item 308, reads on "...questionnaire..."; col 9, lns 32-61);

(c) collecting genomic data from the group of persons (Summerell: Fig. 3, item 308, reads on "...questionnaire..."; col 9, lns 32-61, note in particular ln 49, "...genetic makeup...");

(d) performing a statistical analysis of the health data in relation to the lifestyle data and the genomic data, so as to determine statistical correlations between the genomic data, the lifestyle data and the health data (Summerell col 9, ln 62 - col 16, ln 35); and

(e) providing advice to persons within the group of persons based on the



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statistical correlations; whereby persons at high risk of disease or other health problems, based on the statistical analysis, are provided with advice on lifestyle changes which would be statistically effective in reducing health risks (Summerell: Figs. 17-30, col 16, ln 51 through col 17, ln 6).

N. As per claim 17, Summerell discloses a method further comprising the inclusion of health data, lifestyle data, and genomic data from another group of persons into the statistical analysis used to provide advice and feedback to the group of persons (Summerell: Fig. 9, reads on "10-year US Census Mortality Data").

O. 18. A health maintenance method directed towards a person (Summerell: col 2, lns 57-59), comprising the steps of:

(a) providing the person with a lifestyle logger (Summerell: col 7, lns 48-50, reads on "client computer system"; col 8, lns 4-7, reads on "stand alone workstation or PC.") for the collection of lifestyle data related to the person (Summerell: Fig. 3, item 308, reads on "...questionnaire..."; col 9, lns 32-61);

(b) providing the person with access to a remote computer system (Summerell: col 7, lns 48-50, reads on "server computer system"), so as to collect lifestyle data (Summerell: Fig. 3, item 308, reads on "...questionnaire..."; col 9, lns 32-61) from the person; and

(c) providing suggested lifestyle changes to the person based on the collected

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lifestyle data, so as to statistically reduce health risks (Summerell: Figs. 17-30, col 16, ln 51 through col 17, ln 6).

P. As per claim 19, Summerell discloses a method for predicting health risks of a person, within a group of persons (Summerell: col 23 lns 18-44), comprising the steps of:

(a) providing each person with a lifestyle logger (Summerell: col 7, lns 48-50, reads on "client computer system"; col 8, lns 4-7, reads on "stand alone workstation or PC.");

(b) providing a communications link between each lifestyle logger and a computer system (Summerell: col 8, lns 4-7), whereby lifestyle data (Summerell: col 9, lns 32-61) related to each person is accessible to the computer system;

(c) monitoring health data related to a plurality of persons within the group of persons (Summerell: col 17, lns 28-31);

(d) determining statistical correlations between the collected lifestyle data and the monitored health data (Summerell col 9, ln 62 - col 16, ln 35); and

(e) using the determined statistical correlations to provide advice to persons within the group of persons (Summerell: Figs. 17-30, col 16, ln 51 through col 17, ln 6).

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Q. As per claim 20, Summerell discloses a further comprising  
collecting genomic data from persons (Summerell: Fig. 3, item 308, reads on  
"...questionnaire..."; col 9, lns 32-61, note in particular ln 49, "...genetic makeup...")  
within the group of persons (Summerell: Fig. 9, reads on "10-year US Census Mortality  
Data"); and

performing statistical analysis of the health of the persons in relation to the  
lifestyle data and the genomic data, whereby lifestyle data and genomic data may be  
used to predict the health of a person (Summerell col 9, ln 62 - col 16, ln 35).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for  
all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described  
as set forth in section 102 of this title, if the differences between the subject matter sought to  
be patented and the prior art are such that the subject matter as a whole would have been  
obvious at the time the invention was made to a person having ordinary skill in the art to which  
said subject matter pertains. Patentability shall not be negated by the manner in which the  
invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1,  
148 USPQ 459 (1966), that are applied for establishing a background for  
determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable as applied to claim 8 above, and further in view of over the admitted prior art in the current application (hereinafter "admitted prior art" or APA).

A. As per claim 9, Summerell fails to explicitly disclose a method wherein said resting metabolism is measured by an indirect calorimeter applied to the person, and said energy expended by physical activities is measured by a physical activity sensor applied to the person.

However this feature is well know in the art as evidenced by the admitted prior art.

The admitted prior art discloses the use of "various sensors" and an "indirect calorimeter" included in a PDA for measuring metabolic rate (APA: pg 1, ln 21 through pg 2, ln 3).

It would have been obvious for one of ordinary skill in the art at the invention to incorporate the disclosure of the admitted prior art with the method of Summerell with the motivation of providing the user an easily understandable measurement of wellness (Summerell: col 2, lns42-43).

### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Martin A. Gottschalk whose telephone number is (571) 272-7030. The examiner can normally be reached on Mon - Fri 8:30 - 5.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on (571) 272-6776. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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10/27/2005



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